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April 2, 1997

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HAND DELIVERY

William F. Caton
 Acting Secretary
 Federal Communications Commission
 1919 M Street, N.W., Room 222
 Washington, D.C. 20554

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APR 2 1997

Federal Communications Commission
 Office of Secretary

RE: Notice of Ex Parte Presentation -- CC Docket No. 96-61

Dear Mr. Caton:

On April 1, 1997, Herbert E. Marks and James M. Fink, attorneys for the State of Hawaii, met with Patrick Donovan and Neil Fried of the Common Carrier Bureau to discuss the above-captioned proceeding. In accordance with Section 1.1206(a) of the Commission's rules, two copies of the written presentation are being submitted for inclusion in the public record.

During the meeting, counsel for the State of Hawaii pointed out that GTE's preliminary rate integration plan contained information about rates for service to Hawaii that violated the Commission's rate integration policy and Section 254(g). The information suggests a single (i.e., postalized) rate for calls on the Mainland. The rate for service to Hawaii points is higher. Thus, while for the Mainland states, the rate is the same regardless of the distance of the call, the volume of the traffic between the origin and destination points, or other factors, the rate is higher for points in the State of Hawaii. This rate structure is also employed in an extant GTE tariff.

Thus, it is clear that GTE is using a different rate structure for calls in the Mainland states versus the rate structure used for calls between the Mainland states and the State of Hawaii. This is improper.

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LLP

Please contact either of us if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "James Fink".

Herbert E. Marks
James M. Fink

Enclosure

cc: Patrick Donovan
Neil Fried

SUMMARY OF SUBMISSIONS OF THE STATE OF HAWAII

GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION ARE ESSENTIAL UNIVERSAL SERVICE SAFEGUARDS FOR CONSUMERS IN AREAS SUCH AS HAWAII

Many interexchange carriers have petitioned the Commission to reconsider its decision to faithfully implement Section 254(g)'s requirement that all interexchange services be geographically averaged and rate integrated. The Commission should reject these petitions because their proposals would violate the law and unreasonably discriminate against the people of Hawaii.

- **STATUTORY REQUIREMENT -- 47 U.S.C. § 254(g)**

Congress enacted Section 254(g) in the Telecommunications Act of 1996 in order to codify the Commission's already-existing policies of geographic rate averaging and rate integration. These policies ensure that the citizens of areas such as Hawaii are not discriminated against and do not pay rates for interexchange telecommunications services that are higher than those paid by citizens residing in the continental United States ("CONUS").

- **Geographic Rate Averaging** -- Section 254(g) of the Communications Act requires that all providers of interexchange services charge the same rates to subscribers in rural and high-cost areas that they charge in urban areas.
- **Rate Integration** -- Section 254(g) requires that all providers of interexchange services charge the same rates to all of its subscribers in all states. This means that the same rate structure must be used for interexchange calls between points in the CONUS as that used for calls between CONUS and Hawaii points.

- **THE PLAIN LANGUAGE OF SECTION 254(g) APPLIES TO ALL INTEREXCHANGE CARRIERS AND ALL INTEREXCHANGE SERVICES**

All interexchange services are subject to the geographic rate averaging and rate integration obligations of Section 254(g), regardless of the technology employed.

- **Satellite Services** -- In its First Report and Order in Docket 96-61, 11 FCC Rcd 9564 (Aug. 7, 1996) ("First Report and Order") (§ 54), the Commission expressly ruled that the interexchange satellite services of American Mobile Satellite ("AMSC") are subject to Section 254(g).
- **Commercial Mobile Radio Services ("CMRS")** -- The same analysis used to include satellite services within the mandate of Section 254(g) applies to other interexchange wireless services such as CMRS. The Commission should therefore reject the attempt of the Cellular Telecommunications Industry Association ("CTIA") to exclude CMRS.
- **Small Carriers** -- In its First Report and Order (§§ 40, 53), the Commission expressly ruled that small carriers serving high-cost areas are subject to Section 254(g).
- **Nationwide Carriers Competing Against "Regional" Carriers** --
 - a) In its First Report and Order (§§ 38-39, 52), the Commission expressly ruled that forbearance from the geographic rate averaging and rate integration requirements was not warranted because it would harm the very people the statute was intended to protect (i.e., telephone subscribers living in high-cost and rural areas). The Commission stated:

[W]e believe that establishing a broad exception to Section 254(g) for low-cost regions entails a substantial risk that many subscribers in rural and high cost areas may be charged more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirements is unnecessary to ensure just and reasonable and nondiscriminatory charges for subscribers.
 - b) The Commission reiterated this principled position when it rejected AT&T's petition for waiver of Section 254(g). See 12 FCC Rcd 934 (Jan. 17, 1997).
 - c) The parade of evils alleged to result from low-cost regional competitors are unrealistic, given that the BOCs are offering nationwide interexchange services to the fullest extent permitted. Significant independent LECs,

like GTE, also plan to offer interexchange services nationally and internationally.

- **Business Services** -- In its First Report and Order (¶ 9), the Commission expressly ruled that all business services are subject to Section 254(g). The Commission noted that the statutory definition of "interexchange service" "does not create any exception for nonresidential services."
- **Customer-Specific Offerings** -- Section 254(g) applies to customer specific offerings.
 - a) **Rate Integration** -- In its First Report and Order (¶ 52), the Commission expressly did not exempt customer-specific offerings from Section 254(g)'s rate integration requirement: "We are not persuaded that we must forbear from requiring carriers to comply with rate integration, either generally or in competitive conditions." Thus, if the rate structure for the Mainland is postalized, the rate structure for Hawaii must be the same postalized structure. Forbearance from geographic averaging does not mean forbearance from rate integration.
- **Rate Integration Generally** -- Rate integration is not subject to forbearance. Section 10(a)(1) of the Communications Act (47 U.S.C. § 160) bars unreasonably discriminatory rates. The legislative history of Section 254(g) also indicates that no such forbearance is contemplated.
- **Scope of Rulings** -- It is important to protect the integrity of Section 254(g)'s geographic rate averaging and rate integration policies and to deter any evasion or avoidance of Section 254(g). Accordingly, care should be taken in setting forth the standards for granting any degree of forbearance, or otherwise describing the policies. For example:
 - a) **Partial Forbearance Only.** Even where there is forbearance from the geographic rate averaging requirement, it should be made clear that the carrier must still integrate its rates. Indeed, in the orders under reconsideration, the Commission did not forbear from rate integration.

- b) AT&T's Historic Practices Irrelevant. AT&T's or any other carrier's historic practices are not determinative of when a given practice should be granted forbearance from the mandates of rate integration and geographic rate averaging. By enacting Section 254(g), Congress adopted rate averaging as its own policy for promoting universal service goals and Congress expressly stated that any exception to its policy should be "limited." See H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996). Section 254(g) clearly expands the scope of these policies beyond historic practices by applying them to all providers of interexchange services.
- c) Rationale for Forbearance Inapplicable to Certain Discounted Offerings. In its First Report and Order (¶¶ 24-30), the Commission need not have forbore from applying geographic rate averaging to optional calling plans, contract tariffs, or Tariff 12 offerings. These offerings generally involve discounts from basic rate schedules. Where the basic rate schedules are averaged (as required by Section 254(g), these services will remain averaged after applying geographically nondiscriminatory discounts off of those schedules. Thus, there is no need for forbearance in these instances.

**DETARIFFING OF INTEREXCHANGE SERVICES JEOPARDIZES ENFORCEMENT
OF SECTION 254(g)'s RATE AVERAGING AND RATE INTEGRATION
REQUIREMENTS**

- The State of Hawaii supports the Petitions for Reconsideration Filed by: (1) the Rural Telephone Coalition; and (2) the Telecommunications Management Information Systems Coalition.
- The Commission's current information disclosure requirements are insufficient. The Commission requires carriers to make available "information" on rates and terms of service, but does not indicate what specific information carriers must actually disclose. All the Commission has said is that it does not intend to require carriers "to disclose more information than is currently provided in tariffs." Second Report and Order, 4 Comm. Reg. (P&F) 1199 (Oct. 31, 1996) at ¶ 84.
- **Same Information Should Be Required as Was Required Under Tariff --** The Commission generally should require carriers to disclose the same amount of information about rates that is currently provided in tariffs. Such a requirement would not be burdensome because carriers have already been providing this amount of information to the Commission.
- **Provision of Information at Company Headquarters is Insufficient --** For rate information to be accessible to consumers, the Commission should require that the rate information be made available at the following locations:
 - Internet Web Site

Some carriers, such as AT&T and MCI, operate their own web sites. Those carriers that do not can easily post the information on another entity's site.
 - Location In Each State Where Interexchange Carrier Provides Service

Customers will not travel to another state to peruse rate information. If the rate information is to be accessible and useful, it must be provided at convenient locations to the public.

- **Customer-Specific Offerings Should Not Be Exempted from the Rate Information Requirement.**

The Commission should reject the petition for reconsideration filed by the Ad Hoc Telecommunications Users Committee which seeks an exemption for custom-specific offerings. Customers of specialized offerings are also entitled to some protection to assure compliance with the rate integration mandate.

- The Commission did not forbear from applying Section 254(g) to customer-specific offerings. It only forbore from applying the geographic rate averaging requirement.
- Without some public disclosure of rate and service information, customers of specialized offerings will be deprived of the notice necessary to determine whether carriers are possibly engaging in illegal discrimination.
- Customers cannot know that initiating a complaint is warranted unless they have some access to a carrier's rate and service information initially.
- Ad Hoc's professed concern with price collusion is unfounded. Under the tariff regime, the Commission expressly determined that requiring a carrier to file limited rate and service information would not promote price collusion. See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5902 (1991).
- In that 1991 Order, the Commission did not require that the actual customer-specific contracts be filed. Rather, interexchange carriers were only required to file a tariff summarizing the contract.
- The Commission concluded that the provision of this limited amount of information "avoid[s] disclosure of customer proprietary information or information that might increase the risk of tacit collusion in the marketplace."

**SECTION 254(g)'s MANDATE FOR GEOGRAPHIC RATE AVERAGING IS NOT
AFFECTED BY ANY REFORM OF ACCESS CHARGES**

Deaveraged access rates paid by carriers have no bearing on Section 254(g)'s requirement that subscriber charges be geographically averaged. Geographic rate averaging, by definition, is intended to ensure uniform rates for geographical locations with disparate access cost structures.

- **The Subscriber Line Charge ("SLC")** -- The SLC is a rate charged directly to end-users (i.e., subscribers) for an interexchange service and thus cannot be deaveraged without violating Section 254(g).
- **Carrier's Carrier Access Charges (see 47 C.F.R. § 69.4(b))**-- If any access charges paid by carriers are deaveraged, such deaveraging would not, and should not, affect the obligation of interexchange carriers to offer geographically averaged rates to their subscribers.